

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GERARD W. ATCHINSON, SR.,

Plaintiff,

v.

SEARS, SEARS HOLDINGS
CORPORATION, SEARS HOLDINGS,
SEARS, ROEBUCK AND CO., and SEARS
HOME IMPROVEMENT PRODUCTS,

Defendants.

CIVIL ACTION

NO. 08-3257

ORDER

AND NOW, this 17th day of August, 2009, upon consideration of the Motions filed by both parties, it is hereby **ORDERED** as follows:

(1) The Motion of Defendants, Sears, Sears Holdings Corporation, Sears Holdings, Sears, Roebuck and Co., and Sears Home Improvement Products, for Leave to File a Sur-Reply (Doc. No. 20), is **GRANTED**.

(2) The Motion of Plaintiff Gerard W. Atchinson, Sr. for Leave to Amend his Complaint (Doc. No. 17) is **GRANTED IN PART**, and **DENIED IN PART**, as set forth in the attached memorandum.

(3) Plaintiff is granted leave to withdraw his claim under ERISA and to amend his Complaint to include a claim for breach of contract. The Motion to Amend is denied in all other respects.

BY THE COURT:

/s/ Robert F. Kelly
ROBERT F. KELLY
SENIOR JUDGE